

Senate Floor Statement - Senate Bill 899

Senator Charles Poochigian

April 16, 2004

Thank you, Madam President and Members.

California's workers' compensation crisis has attracted national attention. It's the biggest problem California faces some say. The reality is that it's emblematic of deeper afflictions that hurt our economy, that hurt our people.

In study after study, in poll after poll, California's reputation for having a hostile business environment is well-known. California's costs of doing business are 30% -- at least -- above the national average. Jobs and the economy ought to be our central focus here. In fact, in recent data that's been offered to us, it's clear that California is a drag on our national economy.

We face an historic opportunity here today in this time, borne of necessity, given weight because of a strong governor. Repair of our broken workers' compensation system is central to our economic vitality and our recovery. We can't continue to force our employers, businesses, non-profits and taxpayer-supported public agencies to continue to be pummeled by costs that are two-and-a-half times the national average. This data alone is evidence of the dysfunction of the system.

Our ability to compete, to grow our economy and create jobs is at the heart of this reform movement. Governor Schwarzenegger announced two weeks ago that it's time to stop talking and start writing. We now have the opportunity to vote on a comprehensive reform bill that gives California businesses -- and I would add, importantly, their workers -- a fighting chance.

What we accomplished clearly is not perfection -- not even close. It's not what any one of us would have written precisely if we were doing it alone. There have been intense discussions and negotiations. There's been a lot of tension. Senator Burton, Senator Brulte, Speaker Nuñez, and Assembly Republican Leader McCarthy, working closely with the governor and a number of the rest of us have, I think, crafted something that is an appropriate compromise. Again, it's not perfect, but we think it's good. It offers hope -- hope that must be turned into reality.

In the months ahead, we'll know. We can study it, we can analyze it, but in the final analysis, we'll know when employers tell us so. That relief has come, that their optimism about the future is back.

We'll know when workers tell us that we've done something good as well. The flaws in California's workers' compensation system are rooted in its inefficiency, in high costs, in the arbitrariness of it, in delays that foster contentiousness that distracts from what the system ought to be doing, which is to provide medical care and instead leads to litigation.

The bill before us presents an effort to confront these flaws, I believe, effectively. I'll touch on the elements in general:

Medical care reform: The bill includes a continuity of care through a pool of qualified doctors. There seems to be broad support for the idea -- there *is* broad support for the idea of providing this range of choice. And, if the medical care is not deemed appropriate on the first visit, that injured worker has an opportunity to get a second opinion and a third before going to independent medical review -- independent medical review that, if it validates the concerns, allows the injured worker to opt out of that system. If it doesn't, the worker would continue to be treated within that pool of physicians and medical professionals that are offered.

It offers immediate medical care. 93% of all claims in workers' comp are found to be work-related. It eliminates the need to seek costly independent medical attention which surely would be sought for those injuries that are real, only later to be turned in for recompense, perhaps at rates much higher than would have been necessary under the workers' comp system that's being devised.

Permanent disability reform: This bill standardizes impairment ratings and brings common sense to the PD system. Decisions are made according to nationally recognized standards. The American Medical Association develops guidelines to bring about reasonableness and consistency to the system. It would provide for additional funding for the most severely injured workers in our state. It would streamline the alternative dispute resolution system through a number of means, including timelines. There would be a cap on temporary disability of two

years. We know from the experts that some of the highest costs -- unnecessary costs -- in workers' comp come from difficulties in getting injured workers back to work and the associated expenses of the temporary disability system. There will be caps on that.

There are major reforms within PD, within permanent disability, to apportionment -- reforms that would assure that disability payments would be given and continue to be afforded based on the extent to which disabilities are related to a workplace injury. There will be return-to-work incentives, a two-tier system -- a system that, where there's a job offered to return to work there's a decrease in the payment, and if there isn't, there's an increase in the payment. We think that this offers an incentive both to the employer and employee to minimize costs within the system.

Penalty reform: Under the current system we have this bizarre calculation whereby there's a 10% penalty for payments that are unreasonably late -- not on the payment that's late but on the entire species of payment, the entire classification of payment. So, if you had a \$100,000 case with a \$100 payment late, the penalty would not be on the \$100, but on the \$100,000. It drives up costs unreasonably and, thankfully, I think that there's still bipartisan support to bring some rationality to that system so that there would be a percentage slightly higher applied, but to just the amount of the arrearage.

There are a number of other provisions, I won't go into them in detail. I know that you've had the opportunity to read the analysis, study the bill, the provisions, of course, extensive as they would be in the comprehensive package such as this.

There you have it. We don't know for sure. Time will tell. Hopefully, we will learn from the experience but we've taken steps -- again not final steps -- but important ones to drive down costs significantly while ensuring adequate treatment for truly injured workers.

I ask for your Aye vote.